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09/854,156	05/10/2001	Ernest W. Moody	MOODY #24	7134

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EXAMINER

MENDIRATTA, VISHU K

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 07/25/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 10

Application Number: 09/854,156  
Filing Date: May 10, 2001  
Appellant(s): MOODY, ERNEST W.

**MAILED**  
**JUL 25 2003**  
**GROUP 3700**

\_\_\_\_\_  
Ernest W. Moody  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 05/10/03.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

No amendment after final has been filed.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

Appellant's brief includes a statement that claims 1-20 and 21-26 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

**(8) *Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) *Prior Art of Record***

6,132,311	Williams	10-2000
5,573,249	Johnson	11-1996

6,227,969	Yoseloff	5-2001
6,146,271	Kadlic	11-2000

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1,4,14,21,26 are rejected under 35 U.S.C. 102(e) as being anticipated by Williams.

Williams teaches a method of playing a poker game with at least five card final hand (Fig.1-3), player selecting to play at least two hands (col.4, lines 14-16), dealing and displaying partial hands less than five cards each (32,34) and same cards in each hand (32,34), displaying additional cards (col.4, lines 24-25), poker ranks are determined and amount won by players (col.4, lines 27-32).

Claims 2,3,5,8-13, 15-17, 20, 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams in view of Johnson.

Williams teaches all limitations of these claims except that it does not teach variation in total number of cards in a final hand and a total number of cards in a partial hand.

Johnson teaches variation in total number of cards in final as well as partial hand (col.4, lines 24-32). In order to make the game attractive, it would have been obvious to create variations by varying number of cards in final and partial hands. One of ordinary skill in art at the time the invention was made would have created such variations.

Examiner views limitations in claims 13,20 and 22 as choices as preferred by gaming houses.

Art Unit: 3711

Claims 6,7,18,19, 23,24 rejected under 35 U.S.C. 103(a) as being unpatentable over Williams in view of Yoseloff.

Williams teaches all limitations of these claims except that it does not teach dealing additional cards from a depleted deck. Yoseloff teaches using a depleted deck for such purposes (col.10, lines 30-36). Examiner views such practice as commonly known in the art area and also a choice of gaming house. One of ordinary skill in art at the time the invention was made would have used a depleting deck for dealing additional cards. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Williams in view of Kadlic.

Williams teaches all limitations of these claims except that it does not teach player selecting cards in partial hands. Kadlic teaches a player selecting cards for partial hands prior to completing final hands (Abstract). In order to make the game interesting, it would have been obvious to allow players to select cards in partial hands. One of ordinary skill in art at the time the invention was made would have allowed players to select cards in partial hands.

**(11) Response to Argument**

Applicant's argument that Williams does not disclose stud poker, is not persuasive.

Williams sets up the environment by indicating numerous stud poker games in the "Back ground of invention" in the disclosure. William's provides an option to draw and discard "none" of the first two cards, indicating that the final five-card hand had no replacement cards. However, applicant's claims are examined on the merit of the

Art Unit: 3711

limitations in the claim and all limitations of claims 1,4,14,21 and 26 are within the Williams reference.

At this instant it is important to examine the applicant's claim preambles that provide the only indication in applicant's claims for being stud poker.

For that matter, applicant's preamble language provides no antecedent basis for terms in the body of the claim, the claim language does not set out complete invention, merely provides intended use for playing a stud poker and finally the preamble is not essential to understand limitations on the body of claim.

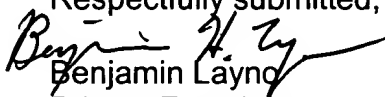
Applicant further argues that Williams teaches only one partial hand, is not persuasive. Williams cards 32 and 36 are used as common cards to make five-card final hands with five sets of cards 40,50,60,70,80 in that cards 32 and 36 are "same in suit and rank" for all five hands.

Applicant's argument that Williams makes "one wager for all hands" is not the same as "applicant's one wager allocated to all hands", is not persuasive. Examiner takes the position that both have the same meaning.


With regards to "preselected cards in partial hand" the applicant does not disclose any criticality for obtaining a "preselected cards in partial hand", however receiving preselected cards is inherently possible in Williams first two cards. This is demonstrated in Fig.2 in two cards 32 and 36 being in same suit.

Art Unit: 3711

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,  
  
Benjamin Layno  
Primary Examiner

July 23, 2003

Conferees  
Paul Sewell, SPE.....

Vishu Mendiratta, Examiner.....

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